

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.9 of 2018

In

Civil Review No.320 of 2017

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Satya Deo Dwivedi son of Late Namdeo Dwivedi resident of Mohalla-
Karaihiya, P.S.+ P.O.- Barh, District- Patna. Appellant

Versus

1. The State of Bihar.
 2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
 3. The Chief Engineer, Water Resources Department, Purnea.
 4. The Superintending Engineer, Mahananda Flood Control Circle, Katihar.
 5. The Executive Engineer, Flood Control Division, Katihar.
- Respondents

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Appearance :

For the Appellant/s : Mr. Madan Prasad Singh No-2, Advocate
For the Respondent/s : Mr. Anjani Kumar -AAG 4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-07-2018

Challenge under the Letters Patent Appeal is to the order dated 02.02.2015 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 137 of 2014 by which the learned Writ Court has refused to accept the contention of the petitioner-appellant that he would be entitled for payment of salary for the period 22.04.2010 to 31.12.2011 when his application for voluntary retirement remained pending with the respondent authorities.

2. It appears that the petitioner had preferred a Letters Patent Appeal bearing No. 635 of 2015 for setting aside the order passed by the learned Writ Court but in the nature of submissions



made before the learned co-ordinate Bench of this Court in the said Letters Patent Appeal, the Bench was of the view that the facts, which are being pleaded now in the appeal, should be brought to the notice of the learned Single Judge and therefore, disposed of the appeal without interfering with the order passed by the learned Writ Court with a liberty to file a review application. Thereafter, Civil Review No. 320 of 2017 was filed by the petitioner before the learned Writ Court, which was rejected vide order dated 06.12.2017.

3. Even though the prayer portion of the Letters Patent Appeal is not clearly challenging the order dated 02.02.2015 and at first place it appears that this appeal has been preferred against the review order only, but in course of hearing learned counsel for the appellant has been able to satisfy us that the order dated 02.02.2015 passed in C.W.J.C. No. 137 of 2015 is in fact, under challenge and pleadings in this regard are available on the record. We have, thus, considered the Letters Patent Appeal on its own merit.

4. Learned counsel for the appellant submits that a bare perusal of the impugned judgment, as contained in Annexure-1, would show that the learned Writ Court could not appreciate that after submission of application seeking voluntary retirement on



21.04.2010, the petitioner was working but he was not being allowed to make his attendance. On the other hand, the contention of the petitioner has been contested by the State respondents stating that earlier when the petitioner moved this Court in C.W.J.C. No. 6724 of 2013 seeking payment of salary, the Principal Secretary, Water Resources Department-cum-Appellate Authority was entrusted to look into the matter. The Principal Secretary, reviewed the entire official records and found that the petitioner was not present on duty as per attendance register and no evidence was produced by the petitioner regarding attempt to work, thus, the petitioner was not entitled to payment of salary.

5. We have heard learned counsel for the petitioner-appellant and learned AAG 4 for the State as also perused the materials available on the records. The contention of the petitioner has been taken note of in the order dated 07.10.2013 passed by the Principal Secretary, Water Resources Department, Govt. of Bihar. He has also perused the records and found that for the relevant period in the column against the petitioner's name in the attendance register there is no over writing and is clearly marked as absent due to application for voluntary retirement. The petitioner was asked to furnish any other evidence to suggest that he had attempted to work. The Principal Secretary refused to rely



upon the contention of the petitioner that the Executive Engineer would physically prevent a person from working and if he was so prevented, he could have lodged a suitable case with the concerned Police Station. ‘

6. We find that the application of the petitioner seeking voluntary retirement was accepted on 31.12.2011, for the first time the writ application was filed in the year 2013 in which a complaint was made that he was not allowed to work during the period his application seeking voluntary retirement remained pending with the department. The conduct of the petitioner does not inspire confidence inasmuch as it appears to this Court that no reasonable person, particularly, a person in the class and category of the petitioner would remain silent for over one and half years during which he has allegedly, not being allowed to work by the Executive Engineer. There is no chit of paper to suggest that the petitioner ever made a complaint in this regard to any authority. The petitioner did not move this Court with any such complaint and only after about two years from the date of acceptance of his request for voluntary retirement he chose to move this Court in the year 2013 for a Mandamus to the State respondents to pay his salary for the given period.



7. Now, we are of the considered opinion that the learned Writ Court has rightly refused to allow the writ application and no fault may be found with the order rejecting the review application.

8. This Letters Patent Appeal has no merit, it is accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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